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SUPREME COURT OF THE UNITED STATES.

No. 70.

JOHN McCOLLAM, PLAINTIFF IN ERROR,

vs.

JENNISON EAGER.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF LOUISIANA.

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U. S. CIRCUIT COURT,
9th circuit, eastern district of the State of Louisiana.

Be it remembered, that on the eighteenth day of November, in the year of our Lord eighteen hundred and thirty-nine, came in the circuit court of the United States, 9th circuit, in and for the eastern district of Louisiana, Jennison Eager, by his attorney, C. M. Jones, esq., and filed the following petition, to wit:

To the honorable the judges of the circuit court of the United States, for the ninth judicial circuit of the United States, for the eastern district of Louisiana:

The petition of Jennison Eager, who resides in, and who is a citizen of, the State of Kentucky, respectfully shows, that H. T. Williams and A. F. Rightor, who reside in Donaldsonville, Louisiana, and are citizens of the State of Louisiana, are justly indebted to him, in solido, as endorsers of the following described promissory note, in the sum of five thousand dollars, with interest at five per cent. from the 1st June, 1839, in the following manner: that petitioner is holder and owner of a certain promissory note for the sum of five thousand dollars, dated Donaldsonville, 27th July, 1838, signed Charles Bishop, payable all the month of May, 1839, to the order of said Williams & Rightor; that the said note is endorsed by said A. F. Rightor and H. T. Williams, and also on the back of said note the said Williams and the said Rightor waive the necessity of a demand of payment from the maker, and also the necessity of notice of said demand and protest to themselves. All of which more fully appears by the note annexed to, and made part of [this] petition.

Wherefore, and by reason of premises, petitioner prays that said A. F. Rightor and H. T. Williams be cited to appear and answer this petition, and that after due proceedings had, they be condemned in solido to pay the amount claimed, with interest, costs, &c., and for general relief, &c.

(Signed) C. M. JONES, *for Pet'r.*

Copy of note.

DONALDSONVILLE, *27th July*, 1838.

In all the month of May next, 1839, I promise to pay H. Williams and A. F. Rightor or order, the sum of five thousand dollars, value received.

(Signed) CHARLES BISHOP.

$5,000.

Received twenty-five dollars, being amount of fee due Wm. R. Green, as counsel instituting suit on the above note in the 2d judicial district court, Ascension.

(Signed) R. W. MEHONS.

Ascension, *November* 2, 1839.

(Endorsed.) A. F. RIGHTOR,
H. T. WILLIAMS.

We waive the necessity of a demand of payment on the maker of the within note and of protest for non-payment, and also of notice to ourselves as the endorsers of said note of its non-payment.

(Signed) H. T. WILLIAMS,
A. F. RIGHTOR.

And afterwards, on the 18th day of November, in the year 1839, the following citations were issued.

The President of the United States of America to the marshal of the eastern district of Louisiana, or his lawful deputy, greeting.

Jennison Eager,
vs.
H. T. Williams & A. F. Rightor. } No. 535.

You are hereby commanded to summon H. T. Williams to comply with the demand contained in the petition, of which a copy accompanies this citation, or deliver his answer to the same in the office of the clerk of the circuit court of the ninth judicial circuit, and eastern district of Louisiana, in the city of New Orleans, in ten days after the service hereof; which delay is increased one day for every twenty miles the defendant's residence is distant from New Orleans, the place where the court is held.

Witness, the honorable R. B. Taney, chief justice of the Supreme Court of the United States of America, at the city of New Orleans in the said eastern district of Louisiana, this eighteenth day of November, in the year of our Lord one thousand eight hundred and thirty-nine, and of the independence of the said United States of America the 64th year.

DUNCAN N. HENNEN, *Clerk*.
By A. PIERSE, *Deputy Clerk*.

Marshal's return to the above citation.

Received, Nov'r 19th, 1839, and executed the same on the 17th December, 1839, by delivering to the defendants, H. T. Williams and A. F. Rightor, in person, copies of petition and the within citation, and make my return this 18th December, 1839—75 miles from New Orleans.

(Signed) D. A. BARY,
Deputy U. S. Marshal.

(*Copy of citation to Rightor.*)

The President of the United States of America to the marshal of the eastern district of Louisiana, or his lawful deputy, greeting:

JENNISON EAGER, vs. H. T. WILLIAMS & A. F. RIGHTOR. } No. 535.

You are hereby commanded to summon A. F. Rightor to comply with the demand contained in the petition, of which a copy accompanies this citation, or deliver his answer to the same in the office of the clerk of the circuit court of the United States, ninth judicial circuit, and eastern district of Louisiana, in the city of New Orleans, in ten days after the service hereof; which delay is increased one day for every twenty miles the defendant's residence is distant from New Orleans, the place where the court is held.

Witness, the honorable R. B. Taney, chief justice of the Supreme Court of the United States of America, at the city of New Orleans, in the said eastern district of Louisiana, this eighteenth day of November, in the year of our Lord one thousand eight hundred and thirty-nine, and of the independence of the said United States of America the 64th year.

DUNCAN N. HENNEN, *Clerk*.
By A. PIERSE, *Deputy Clerk*.

Marshal's return to the above citation.

Received, Nov'r 19th, 1839, and executed the same on the 17th December, 1839, by delivering to the defendants, H. T. Williams and A. F. Rightor, in person, copies of petition and the within citation, and make my return 18th December, 1839—75 miles from New Orleans.

(Signed) D. A. BARY,
U. S. Deputy Marshal.

And afterwards, to wit, on the 2d of January, 1840, the following judgment by default was entered:

JENNISON EAGER, vs. H. T. WILLIAMS & A. F. RIGHTOR. } No. 535.

In this case, it appearing to the court that process has been duly served, and no defence or answer filed within the legal delay—ordered, on motion of C. M. Jones, esq., for plaintiff, that judgment, by default, be entered against the defendants.

And afterwards, on the 7th day of January, 1840, final judgment was entered up in the words and figures following, to wit:

JENNISON EAGER, vs. H. T. WILLIAMS & A. F. RIGHTOR. } No. 535.

In this case it appearing that judgment, by default, has been duly entered, and more than three days have elapsed since the taking of

the same, and no motion having been made for setting the same aside and filing an answer, on motion of C. M. Jones, esq., of counsel for the plaintiff, having fully made out his case, ordered, that judgment by default be confirmed, and that final judgment be entered up in favor of the plaintiff and against the defendants, A. F. Rightor and H. T. Williams, jointly and severally, for the sum of five thousand dollars, with interest of five per centum per annum from the 1st June, 1839, and for cost of suit to be taxed.

Judgment entered, January 5, 1840.

Judgment signed, January 25, 1840.

(Signed) P. K. LAWRENCE, *U. S. Judge*.

Afterwards, to wit, on the 13th day of March, 1840, the following fieri facias was issued:

CIRCUIT COURT OF THE UNITED STATES,
for the 9th circuit, holding sessions in and for the eastern district of Louisiana.

The President of the United States to the marshal of the eastern district of Louisiana, or his lawful deputy, greeting:

You are hereby commanded that you demand from A. F. Rightor and H. T. Williams, jointly and severally, the sum of five thousand dollars, with interest of five per centum per annum from the first of June, eighteen hundred and thirty-nine, and for costs of suit—cash which Jennison Eager lately recovered by judgment of the circuit court of the United States, for the 9th circuit and eastern district of Louisiana; and if they shall not pay the same on demand, that then you cause the same to be made out of the personal estate of the said A. F. Rightor and H. T. Williams, except slaves, in your district, if sufficient personal estate, exclusive of slaves, can be found therein; but if sufficient personal estate of said A. F. Rightor and H. T. Williams, exclusive of slaves, cannot be found in your district, that then you cause the sum to be made out of the real estate and slaves of the said A. F. Rightor and H. T. Williams in your district, whereof they were owners on the fifth day of January, 1840, into whose hands soever the same may have come; and that you have those moneys before our said court, to render to the said Jennison Eager for the judgment aforesaid, on the sixtieth day from date, together with this writ.

Witness, the honorable R. B. Taney, Chief Justice of the Supreme Court of the United States, this thirteenth day of March, A. D. 1840, and 64th year of the independence of the United States.

DUNCAN N. HENNEN, *Clerk*.
By DE WINT, *Dep'y Clerk*.

Marshal's return.

Made demand of the within fi. fa., 11th April, 1840, of the defendants, A. F. Rightor and H. T. Williams, at Donaldsonville,

La., which they refused to pay, but surrendered the following named property to satisfy the same, to wit: one tract of land containing two thousand acres, with the improvements thereon, situated opposite the Red River cut-off, and in the parish of Point Coupee, and bounded as follows: on the upper side by land located for General La Fayette, and on the lower side by land claimed by Judge Mays, and fronting on the Mississippi river; five negroes, Kit, aged about 25 years; George, aged about 26 years; Isaac, aged about 16 years; and Priscilla, aged about 22 years, and her child, William, about 12 months old; 15 head of horses; 150 head of cattle; about 40 head of sheep; wagons, carts, ploughs, and farming utensils generally. After having the property advertised 30 entire days, that is, from the 23d of June until the 31st day of July, and having it appraised according to law, I, on the 31st day of July, at the place and hour designated in the advertisement, proceeded to offer the property, after reading a certificate of mortgages procured from the recorder of the parish of Point Coupee, against said defendants, and after repeatedly crying it, there was no sale for want of a bid to the amount required by law. After re-advertising said property fifteen entire days from the second notice given, stating in said advertisement that the property would be sold on a credit of twelve months, on the 22d day of August, for what it would bring, on the day above mentioned, I offered said property for sale on the premises, that being the place set forth in the advertisements. At the hour of 11 o'clock, and after repeatedly crying it, John McCollam became the purchaser for the sum of five thousand four hundred and forty-two dollars forty-one cents, for which I have his bond with J. H. Ilsley, Adolphe Maurin, James Clemmons, Wm. Brooks, and James Andry.

(Signed) M. MARIGNY,
U. S. Marshal.
By J. HUNTER COLLINS,
Dep'y U. S. Marshal.

Twelve months' bond—filed August 23d, 1840.

Know all men by these presents, that we, John McCollom, John H. Ilsley, Adolphe Maurin, James Clemmons, Wm. Brooks, and Alexandria Ardry, are held unto Jennison Eager, in the sum of five thousand four hundred and forty-two dollars and $\frac{41}{100}$, lawful money of the United States, for the payment whereof, to the said Jennison Eager, his heirs, executors, and administrators, and assigns, we jointly and severally in solido bind ourselves, our respective heirs, executors, administrators, firmly by these presents.

Witness our hands and seals, hereunto affixed at Red River landing, this 22d day of August, 1840.

Whereas, the above bounden John McCollom has this day become the purchaser of a tract of land containing two thousand acres of land with the plantation and improvements thereon, situ-

ated opposite the Red River cut-off, bounded on the upper side by lands located for General La Fayette, and on the lower side by lands claimed by Judge Mays; five negroes, Kit, a man 25 years of age; George, 26; Isaac, 16 years; Priscilla, negro woman, 22 years old, and her child William, about 12 months old; 15 or 16 head of horses; 150 head of cattle; about 40 head of sheep; wagons, carts, ploughs, and farming utensils, generally; sold at public auction by the marshal of the United States for the eastern district of Louisiana, by virtue of a writ of fieri facias, issued from the honorable the circuit court of the United States, for the said eastern district of Louisiana, in the ninth judicial circuit, at the suit of Jennison Eager vs. A. F. Rightor and H. T. Williams, and numbered 535 on the docket, as appears by the deed of sale executed by the said marshal in the office of the recorder of mortgages, in the parish of Point Coupee, and in the clerk's office of said court, which property was purchased, as aforesaid, at twelve months credit, on the said 22d day of August, 1840, for the price of five thousand four hundred and forty-two dollars [and] forty-one cents. The purchaser being required to give good and sufficient joint security, bearing five per cent. interest from the date of adjudication, and mortgage on the thing sold, until final payment.

Now, the condition of the foregoing obligation is such, that if the above bounded J. McCollom, J. H. Ilsley, J. Clemmons, Wm. Brooks, and A. Ardry, shall well and truly pay unto the said Jennison Eager, his heirs or assigns, the sum of $5,442 41, on or before the expiration of twelve months from the day of the date hereof, with 5 per cent. interest, then the foregoing obligation shall be void, but otherwise shall remain in full force and virtue.

Signed and delivered in the presence of
J. Hunter Collins, and
Joseph Moore.

JOHN McCOLLOM,
JOHN H. ISLEY,
ADOLPHE MAURIN,
By their attorney in fact.
B. R. COYLE,
JAMES CLEMMONS,
WM. BROOKS,
ALEX'R ARDRY.

(Signed) JOHN H. ILSLEY,
Surety.
ADOLPHE MAURIN,
As Surety.

And afterwards, to wit, on the 23d day of August, 1841, the following execution was issued.

CIRCUIT COURT OF THE UNITED STATES,
For the 9th circuit, holding sessions in and for the eastern district of Louisiana:

The President of the United States to the marshal of the eastern district of Louisiana, or his lawful deputy, greeting:

You are hereby commanded that you demand from John McCollom, John H. Ilsley, Adolphe Maurin, William Brooks, James Clemmons, and Alexander Ardry, jointly and severally, the sum of five thousand four hundred and forty-two dollars forty-one cents, with interest thereon at the rate of five per centum per annum, from the twenty-second day of August, 1840, till paid, and the costs of this execution, clerk's fees $5 33, marshal's fees $127, which Jennison Eager lately recovered by judgment of the circuit court of the United States for the ninth circuit and eastern district of Louisiana; and if they shall not pay the same on demand, that then you cause the same to be made out of the personal estate of the said John McCollom, John H. Ilsley, Adolphe Maurin, William Brooks, James Clemmons, and Alexander Ardry, except slaves, in your district, if sufficient personal estate, exclusive of slaves, can be found therein; but if sufficient personal estate of said John McCollom, John H. Ilsley, Adolphe Maurin, William Brooks, James Clemmons, and Alexander Ardry, exclusive of slaves, cannot be found in your district, that then you cause the sum to be made out of the real estate and slaves of the said John McCollom, John H. Ilsley, Adolphe Maurin, William Brooks, James Clemmons and Alexander Ardry, in your district, and that you have those moneys before our said court, to render to the said Jennison Eager for the judgment aforesaid on the seventieth day from date, together with this writ.

Witness the honorable Roger B. Taney, Chief Justice of the Supreme Court of the United States, this 23d day of August, A. D. 1841, and 66th year of the independence of the United States.

(Signed) DUNCAN N. HENNEN, *Clerk.*
By H. B. PAGE, *Dep. clerk.*

N. B. The above execution being issued on a twelve months' bond, the property you may seize is to be sold for what it will bring in cash.

(Signed) H. B. PAGE, *Dy. clerk.*

Marshal's return.

Received, August 24th, 1841, and made demand of the within named defendants for the payment of this writ, which they refused. I then seized the following described property, viz: Kit, a negro man aged about twenty-eight years; George, a negro man aged about 28 years; Isaac, a negro man aged about 32 years; Priscilla, a negro woman aged about 22 years, and her child William, aged

about two years; and after giving the defendant due and legal notice of said seizure in the manner pointed out by law, I advertised the said property for sale, by posting advertisements on the doors of the court-house and church in the parish of Ascension, Louisiana, where said property was seized, and also by publication in the Planter's Advocate, a paper published (weekly) in said parish. Said advertisements were in the French and English languages; and previous to the day of sale this writ was stayed by an injunction from M. Marigny, U. S. marshal.

(Signed) J. W. PROFFITT,
Dy. U. S. marshal.

And afterwards, to wit, on the 1st day of October, 1841, the following petition for an injunction and judge's order were filed in the clerk's office, U. S. circuit court, 9th circuit, E. D. L.

To the honorable the circuit court U. S. 9th judicial circuit, eastern district of Louisiana.

The petition of Benjamin W. Lawes, a resident of the parish of Ascension, acting in the premises by virtue of a special and express procuration hereunto annexed, for reference as the agent and attorney in fact of John McCollom, also a resident of the said parish, but now temporarily absent from the State, respectfully represents: that at a public sale made by Mandeville Marigny, marshal of the United States for the eastern district of Louisiana, on the 22d day of August, 1840, by virtue of a writ of fi. fa. issued out of this honorable court in the suit of Jennison Eager vs. A. F. Rightor and H. T. Williams, known on the docket of said court by the number 535, a certain tract of land situate in the parish of Point Coupee, together with five slaves, and a quantity of moveable property, fully described in the return of the marshal aforesaid on said writ, and his deed of sale, both annexed, and for better certainty made part of this petition, were adjudicated to the said John McCollum, as the last and highest bidder, for the sum of five thousand four hundred and forty-two dollars and forty-one cents, on a credit of twelve months.

Petitioner further represents, that in conformity with the terms of the adjudication, and the law in such case made and provided, the said John McCollum, the constituent of your petitioner, did on the day of sale furnish his bond, payable in twelve months thereafter, with John Ilsley and Adolphus Maurin, of the parish of Ascension, and Alex. Ardry, James Clemans, and Wm. Brooks, of the parish of Point Coupee, as his securities, further represents, that the time for which said bond was given has expired, and that the plaintiff in the suit No. 535, to wit, Jennison Eager, the judgment creditor, has caused an execution to issue from this honorable court on said bond, both against your petitioner and his securities, and that by virtue thereof the marshal of the United States for the eastern district of Louisiana hath seized the property of your peti-

tioner and his securities, which he has advertised for sale, and which he asserts his determination to sell. Now, your petitioner respectfully represents, that the said sale made to his constituent, John McCollum, on the 22d day of August, was absolutely null and void, and vested no title whatever in the said John McCollum, for the following, among other reasons, to wit:

1st. That one undivided third part of all the property adjudicated to your petitioner's constituent, as aforesaid, was not at the time of said sale the property of A. F. Rightor and Henry T. Williams, the defendants in execution, but belonged exclusively to Andrew McCollum, esq., whose title thereto it appears was recorded in the office of the judge of the parish of Point Coupee long prior to the said sale; and that the said Andrew McCollum hath actually brought suit against the said John McCollum, in the second judicial district court of the State of Louisiana, in and for the parish of Ascension, [to] evict him of said third part of said property, as the same will fully appear by the transcript marked "*A*," annexed to this petition, and made [part] thereof.

2d. That the said John McCollum has been actually evicted and dispossessed of all the land adjudicated to him, as aforesaid, on the 22d August, 1840, under certain proceedings instituted against them, Henry T. Williams and Abraham F. Rightor, the defendants in the suit No. 535, before mentioned, and others by John Hagan, esq., who prior to said sale of 22d August, 1840, had a mortgage and vendor's privilege on said land for an amount far exceeding the price of the adjudication aforesaid. That in consequence of the fact "de non aliendo" in the deed of sale between the said Hagan and his original vendees, the said John McCollum was not made party to said suit. Your petitioner refers for greater certainty to the transcript marked "*B*," annexed to this petition, and made part thereof.

3d. Petitioner further represents, that the formalities imperatively required by law were not observed in making said sale of 22d August, 1840; that the sale of the property seized and adjudicated to the said John McCollom was not made by the marshal at the seat of justice of the parish where the seizure was made, to wit, the parish of Point Coupee; that the price offered by the said John McCollom, as the last and highest bidder, was not sufficient to discharge the privileges and mortgages existing on the property, and which had a preference over the judgment creditor, and there could be no adjudication; that a portion of the property sold—to wit, the slaves Christopha, Priscilla, and William—*were* not exhibited on the day of sale, as required by law, being then out of the parish where the sale was made.

Petitioner further represents, that Abraham F. Rightor, one of the defendants in the suit No. 535, intervened in said suit brought by Andrew McCollom against the constituent of your petitioner, and seeks to annul said sale of 22d August, 1840, on account of

the above mentioned and other defects therein set forth, as will more fully appear from the transcript marked "A," before referred to; that, by reason of the facts above *rated*, the consideration of the said twelve months' bond hath utterly failed, and that neither the said John McCollom nor his securities are bound to pay the same.

Now, therefore, in consideration of the premises—the annexed bond and affidavit—petitioner, in his said capacity, respectfully prays that Mandeville Marigny, marshal of the United States for the eastern district of Louisiana, may be enjoined and forbid to proceed in the sale of any property seized in the case of Jennison Eager vs. Henry T. Williams and A. F. Rightor, being No. 535 of the docket of this honorable court; that the said Jennison Eager, who is at present at New Orleans, may be cited to appear and answer this petition, and that the twelve months' bond given by John McCollom, as aforesaid, may be cancelled and given up to the said John McCollom, and that this honorable court will give said McCollom all other and equitable relief. And as in duty bound,

(Signed) JOHN LARUE, *for Pet'r.*

Benjamin Winchester Lawes.

The petitioner in the foregoing suit of Benjamin W. Lawes vs. Jennison Eager, being first duly sworn, declares that all the facts and all questions in the foregoing petition contained are true, except the fact that the title of Andrew McCollum to use third portion of said property was recorded in the office of the judge of the parish of Point Coupee, as set forth in the petition, prior to the sale of 22d August, 1840, which affidavit he believes to be true.

Sworn to and subscribed before me, at the parish of Ascension, this 22d day of September, 1841.

(Signed) B. W. LAWES,
GUI DEGRE,
Justice of the Peace.

Judge's order.

Let an injunction issue in this case, in accordance with the prayer of the petition, upon the petitioner giving bond in the sum of eight thousand dollars, with John Conway, October 1, 1841.

(Signed) THEO. H. McCALEB,
U. S. Judge.

And on the same day and year above written, to wit, 1st October, 1841, the following documents, marked "A," "B," "C," and "D," were filed in the clerk's office of the U. S. circuit court, 9th circuit, eastern district of Louisiana, as pertaining to this suit, and annexed and referred to in the foregoing petition for an injunction.

Copy of document marked "A."

The State of Louisiana.

SECOND DISTRICT COURT,
Parish of Ascension:

ANDREW MCCOLLUM,
vs.
JOHN MCCOLLUM.

Petition to the honorable the court of the second judicial district of the State of Louisiana, in and for the parish of Ascension.

The petition of Andrew McCollum, residing in the parish of Ascension, respectfully represents: That he is the legal owner of an undivided third part of the following described property, situated in the parish of Point Coupee, to wit:

First. A tract of land containing two thousand acres, with the plantation and improvements thereon, lying on the Mississippi river, opposite the Red river cut off, and bounded on the upper side by land located by General Lafayette, and on the lower side by land claimed by Judge Mays.

Second. Fifteen or sixteen head of horses, a hundred and fifty head of cattle, about forty head of sheep, and a number of wagons, carts, ploughs, and various farming utensils, which were on the said tract of land on the 22d of August, 1841.

Your petitioner further represents, that the said undivided third part of the said land, slaves, and moveable property were acquired by him by purchase from Charles Bishop, on or about the 26th February, 1839, by a certain instrument in writing, or act under private signature, wherein the said Charles Bishop sold the said above described property to H. T. Williams, A. F. Rightor, and petitioner, jointly, as is fully set forth in said private act, a copy of which is herewith filed for reference; and that the said private act of sale was duly recorded in the parish of Point Coupee, on or about the 28th of February, 1839, when petitioner took possession of said property.

Your petitioner further represents, that on or about the 11th of April, 1840, the marshal of the United States, acting under an execution issued out of the circuit court of the United States for the 9th circuit, holding sessions in and for the eastern district of Louisiana, against A. F. Rightor and H. T. Williams, in favor of Jennison Eager, seized the whole of said property, and afterwards, on or about the 22d of August, 1840, offered the same at public sale, when it was adjudicated to John McCollam, now residing in the said parish of Ascension.

Your petitioner further represents, that the said Rightor and Williams were owners of only two undivided thirds of the said property; that the said sale did not, and could not, *in any manner*

in any manner affect his, petitioner's, right to his undivided third part; that this was well known to the said marshal, and to the said John McCollom; and that notwithstanding this the said John McCollom has taken possession of the whole of said property, and that he now unjustly and illegally detains the said undivided third part thereof from petitioner, and deprives him of the possession and enjoyment of the said property, or of the undivided third part, as aforesaid.

Your petitioner further represents, that the fruits and revenues of the said undivided third part of said property are reasonably worth the sum of two thousand dollars a year, and that he, the said John McCollom, is in law bound to pay to petitioner the value thereof during the whole time he shall deprive him of the possession and enjoyment of the same.

Wherefore, your petitioner prays that the said John McCollom may be cited before this honorable court, and that after legal proceedings had, the said undivided third part of the said property, described as aforesaid, may be adjudged to petitioner in absolute ownership, and that said John McCollom may be ordered to deliver the same into petitioner's possession.

Your petitioner further prays, that the said John McCollom may be condemned to pay to petitioner the value of one-third part of the fruits and revenues of said property, at the rate of two thousand dollars a year, for the whole time that he detains the same from petitioner, and the costs of suit.

Your petitioner further prays for all and general relief.

(Signed) MILES TAYLOR,
Attorney for pet.

Filed 21st July, 1841.
(Signed) EDWARD F. NICHOLLS, *Clerk.*

Marshal's return.

Received the within process the 21st September, 1841; executed same day, by delivering certified copies of within citation and petition to B. Winchester Lawes in person, agent and attorney in fact of the defendant, John McCollom, by act of *procution*, copy of which the said agent exhibited to me.

Wherefore my return this 21st September, 1841.
(Signed) H. TREILLE, *Sheriff.*

Filed 21st September, 1841.
(Signed) EDWARD F. NICHOLLS, *Clerk.*

I, Edward F. Nicholls, clerk of the 2d district court of the State of Louisiana, in and for the parish of Ascension, certify the foregoing to be true copies from the originals on file and of record in my office.

Witness my hand and official seal, [at] Ascension, this 21st September, 1841.
(Signed) EDWARD F. NICHOLLS, *Clerk.*

Document marked "B."

The State of Louisiana.

JOHN HAGAN, senr.
vs.
HENRY T. WILLIAMS, et al. } Suit No. 965.

In the 2d district court of said State in and for the parish of Ascension.

Petition to the honorable the judge authorized to hold sessions of the second district court in and for the parish of Ascension, State of Louisiana.

The petition of John Hagan, senr., of New Orleans, in said State, would respectfully represent: That Henry T. Williams and Abraham T. Rightor, both of said parish of Ascension, and Charles Bishop, an absentee, and non-resident of Louisiana, and whose residence is unknown to your petitioner, are indebted in solido to your petitioner in the sum of sixteen thousand six hundred and sixty-six dollars and sixty-six two-third cents, with six per cent. per annum interest thereon, from the first day of August, 1838, till paid; for this, to wit, that on said 1st August, 1838, the said Williams and Bishop, at Donaldsonville, in said parish of Ascension, for value received, drew and executed their certain promissory note, signed H. T. Williams [and] Charles Bishop, wherein they promised to pay to the order of said A. F. Rightor, one year after date, the said sum of $16,666 66⅔, with interest as aforesaid; which note the said Rightor afterwards endorsed, signing A. F. Rightor, and delivered to your petitioner, the holder and owner thereof, the same being payable at the Mechanics' and Traders' Bank, New Orleans; further, that at the maturity of said note the same was duly presented for payment at said bank, and payment thereof was refused, and the same was duly protested for non-payment, of which the said endorser, Abraham T. Rightor, had due and legal notice; and the said note is still due and unpaid, although payment has been many times amicably demanded of the makers and endorser thereof; all which will more fully appear by reference to said note and protest, herewith filed, to make part of this petition.

Your petitioner further represents, that on the 20th day of August, 1838, he sold and conveyed to said Henry T. Williams and Charles Bishop, by act before David Lawson McCoy, notary public [in] and for the said city of New Orleans, six certain tracts of land situated in the county of Point Coupee, or in the vicinity thereof, in said State of Louisiana, for the sum and price of fifty thousand dollars, payment in one, two, and three years, with interest at six per cent. per *anum* thereon from date; and besides the vendor's privilege, a special mortgage was reserved by your petitioner, and granted by said Williams and Bishop, on all of said land, for the payment of said price. And in said act of sale the said

Henry T. Williams, by his agent, the said Charles Bishop, and the said Bishop, consented to said mortgage, and further delivered to your petitioner the three several promissory notes of them, the said Williams and Bishop, to the order of, and endorsed by, the said A. F. Rightor, in compliance with the terms and conditions of said sale, which notes were paraphed and *indentified* by said notary, McCoy, with said act of sale; the first of which notes is the one already set forth, and the other two said notes are herewith filed, together with a duly certified copy of said act of sale, and all prayed to be made part of this petition. Said act of sale has been duly recorded in the parish of Point Coupee, where said land lies, and contains the part of non aliendo, by all which your petitioner is entitled to have a judgment against said Henry T. Williams and Charles Bishop, and Abraham T. Rightor, in solido, for the amount of said first note of $16,666 66⅔, with interest, as aforesaid, and to have said mortgage decreed executory against all of said land, and that the same be sold for cash to the amount of said first note and interest, and the balance payable on terms of credit corresponding with those set forth in said act of sale. Wherefore, your petitioner prays that said Henry T. Williams and Abraham T. Rightor be personally duly cited, and the said Charles Bishop be cited by a curator ad hoc, to be appointed by the court; all to appear before your honorable court within the legal delay, to answer this petition, and to avow or disown their signatures to the said promissory notes, and then and there *and there*, the premises considered, that they be condemned in solido to pay to your petitioner the said sum of sixteen thousand six hundred and sixty-six dollars and sixty-six two-third cents, with interest thereon, at six per cent. per annum, from the first day of August, 1838, with costs of suit, and $5 50, of protest and certificate. And further, that said mortgage and said vendor's privilege in favor of your petitioner be decreed to be executory; that all of the said land described in said act of sale be decreed to be sold under said mortgage and vendor's privilege for cash, for the amount of said first promissory note, sixteen thousand six hundred and sixty-six dollars sixty-six two-third cents, with six per cent. interest per annum thereon, from 1st August, 1838, till paid; and the balance payable on the same terms of credit as stipulated in said act of sale, and mortgage for the notes not yet due. And your petitioner further prays for general relief.

(Signed) THOMAS E. IVES, *Att. for petitioner.*

Appointment of curator.

It is ordered, that Andrew McCollom be appointed curator ad hoc, to represent Charles Bishop, the absent defendant, in the above suit, April 16, 1840.

(Signed) THO. C. NICHOLLS,
Judge 2d District.

Filed 16th April, 1840.

(Signed) EDWARD F. NICHOLLS, *Clerk.*

Waiver of citation.

Service accepted of the foregoing petition, and documents making part thereof. Citation waived April 16, 1840.

[Signed] A. F. RIGHTOR, and
H. T. WILLIAMS,
ANDREW McCOLLOM,
Curator ad hoc for C. Bishop.

Consent of parties.

It is agreed and consented by the parties, plaintiff and defendants, in the above suit, that judgment be rendered at the next term of said court in favor of said plaintiff, and against said defendants, as prayed for in the petition in said suit, with a stay of execution till the 1st day of January, 1841.

(Signed) THOS. E. IVES, *Att'y for Plff.*
A. F. RIGHTOR,
H. T. WILLIAMS,
ANDREW McCOLLOM, *Curator.*

DONALDSONVILLE, *April* 16, 1840.

Filed 16th April, 1840.

(Signed) EDWARD F. NICHOLLS, *Clerk.*

Judgment.

JOHN HAGAN, senior,
vs.
HENRY T. WILLIAMS et als. } No. 965.

In this case, by consent of parties on file, and the signature of Charles Bishop, Henry T. Williams, and Abraham F. Rightor, to the several notes sued upon, having been duly proved, and the documentary evidence on file having been considered, it is ordered, adjudged, and decreed, that the plaintiff, John Hagan, senior, have judgment against the defendants, Bishop, Williams, and Rightor, in solido, and do recover of them jointly and severally, the sum of sixteen thousand six hundred and sixty-six dollars [and] sixty-six [and] $\frac{2}{3}$ cents, with 6 per cent. per annum interest thereon, from the first day of August, eighteen hundred and thirty-eight, with costs of suit, and $5 50 cents costs of protest and certificate. And further it is ordered, adjudged, and decreed, that plaintiff's privilege and mortgage, as set forth in his petition, be recognised and made executory, and that all the tracts of land therein described and set forth, as also in the act of sale and mortgage on file in this suit, being the sale from plaintiff to defendants, Bishop and Williams, be seized and sold, according to law, to satisfy said mortgage debt, to the amount of sixteen thousand six hundred and sixty-six dollars and sixty-six [and] $\frac{2}{3}$ cents, with costs of suit, and five dollars and 50 cents costs of protest and certificate in cash, and the balance of the price of said several tracts of land, lying in the

vicinity of the county of Point Coupee, to be payable on the same terms of credit as stipulated in said act of sale and morgage on file, for the two payments not yet due, viz: sixteen thousand six hundred and sixty-six dollars [and] sixty-six [and] $\frac{2}{3}$ cents, with six per cent. interest per annum hereon, from 1st August, 1838, to be paid on the 1st August, 1840; and the like sum of sixteen thousand six hundred and sixty-six dollars [and] sixty-six [and] $\frac{2}{3}$ cents, with interest at six per cent. per annum thereon, from the 1st day of August, 1838, and costs of suit, to be paid on the first of August, 1841; and that there be a stay of execution until the 1st day of January next, eighteen hundred and forty-one.

(Signed) H. F. DEBLIEUX,
Judge 4th District.

May 25, 1840.

Execution.

Second district court, parish of Ascension, State of Louisiana, to the sheriff of the parish of Point Coupee, these presents with, greeting:

John Hagan, senior, vs. H. T. Williams & als. } No. 965.

We do hereby command you, that you forthwith seize into your hands, all the property, real and personal, rights and credits of Henry T. Williams, Abraham F. Rightor, and Charles Bishop, lying within your parish, or such portion thereof as will make and satisfy the judgment in the above entitled case, by plaintiff obtained against them, in solido, to wit: sixteen thousand six hundred and sixty-six dollars [and] sixty-six [and] $\frac{2}{3}$ cents, with interest thereon at $6\frac{2}{3}$ cents per annum, from 1st August, 1838, and $5 50 cents costs of protest, and costs herein incurred. And herein we would have you by preference, seize and first sell the certain tracts of land described in the annexed certified extracts from the records of our court, and by the defendants, Williams and Bishop, specially hypothecated for the pay of this debt, and this upon the terms and conditions in the judgment aforesaid provided, to wit, for the first and second instalments, cash being those due and payable on the 1st August, 1839, and the 1st August, 1840, each for the sum of $16,666 66$\frac{2}{3}$, with interest at $6\frac{2}{3}$ cents per annum, from 1st August, 1838; and for the third instalment of a like amount, with interest as before, maturing and payable the 1st August, 1841, upon a credit of like date.

And should the said amount not be paid you within the legal delay, after notice of the above seizure, then we further command you, that the property which you will have seized, as above, you sell in the manner and with the formalities required by law in satisfaction of the same.

What things soever you do under color of this writ, make your return thereof, hereon endorsed, to us in our said court at Donaldson[ville,] within not less than thirty, nor more than seventy days from its date.

And this shall be your full warrant and authority.

Witness, the Hon. Thos. C. Nicholls, judge of our said court, this 6th January, 1840.

(Signed) EDWARD F. NICHOLLS, *Clerk.*

UNITED STATES OF AMERICA, *State of Louisiana:*

By this public instrument of protest be it known, that on this third day of August, in the year one thousand eight hundred and thirty-nine, at the request of the Mechanics and Traders' Bank of New Orleans, holder of the original note, whereof a true copy is on the reverse hereof written, I, Hilary Briton Cenas, a notary public in and for the city and parish of New Orleans, State of Louisiana aforesaid, duly commissioned and sworn, presented the said note to the proper officer at the Mechanics and Traders' Bank in the city, where the same is made payable, and demanded payment thereof, and was answered, that no funds had been deposited there to pay the same. Whereupon, I, the said notary, at the request aforesaid, did protest, and by these presents do publicly and solemnly protest, as well against the drawer or maker of the said note, as against all others whom it doth or may concern, for all exchange, re-exchange, damages, costs, charges, and interests suffered, or to be suffered, for want of payment of the said note. Thus done and protested in presence of Sam. Donnord and E. Granets, witnesses.

In testimony whereof, I grant these presents under my signature and the impress of my seal of office, at the city of New Orleans, on the day and year first above written.

(Signed) H. B. CENAS, *Notary Public.*

Witnesses: SAM. DORMAN and
E. GRANET.

DONALDSONVILLE, 1*st August*, 1838.

One year after date, we promise to pay to the order of A. F. Rightor, at the Mechanics and Traders' Bank, New Orleans, the sum of sixteen thousand six hundred and sixty-six dollars [and] sixty-six [and] $\frac{2}{3}$ cents, with interest on the same, at the rate of six per cent. per annum, for value received. Ne varietur: secured by mortgage, passed before me on this 17th August, 1838.

(Signed) DAVID McCOY, *Not. Pub.*
H. T. WILLIAMS,
CHARLES BISHOP.

Endorsed. A. F. RIGHTOR,
JOHN HAGAN.

(Original note attached to protest corresponds in all respects to the copy thereof, herein just aforewritten.)

I, the undersigned notary, do hereby certify, that the parties to the note, whereof a true copy is embodied in the accompanying act of protest, have been duly notified of the protest thereof, by letters to them, by one written and addressed, dated on the day of said protest, and served on them respectively, this day, in the manner following, viz: by depositing that for the first endorser in the post office in this city, directed to him at Donaldsonville, La.; also duplicate addressed to him at New Orleans, on the day following this protest; and by delivering that for the last endorser to Mr. Wm. J. McLean, his agent.

In faith whereof, I hereunto sign my name, together with Laurence Dornan and Ernest Granet, at New Orleans, this 5th day of August, eighteen hundred and thirty-nine.

(Original signed) LAWRENCE DORNAN,
E. GRANET,
H. B. CENAS, *Not. Pub.*

I certify the foregoing to be true copies of the original protest, note, and memoranda of the manner of which the notices were served.

In faith whereof, I grant these presents under my signature, and the impress of my seal of office, this 7th day of April, 1840.

(Signed) H. B. CENAS, *Not. Pub.*

DONALDSONVILLE, 1*st August*, 1838.

$16,666 66⅔.

Two years after date, we promise to pay to the order of A. F. Rightor, at the Mechanics and Traders' Bank, New Orleans, the sum of sixteen thousand six hundred and sixty-six dollars and six-sixty [and] ⅔ cents, with interest on the same, at the rate of six per cent. per annum, for value received.

(Signed) H. T. WILLIAMS,
CHARLES BISHOP.

(Endorsed.)

A. F. RIGHTOR.

Demand and protest waived.

(Signed) A. F. RIGHTOR.

"Ne varietur." Secured by mortgage passed before me on this 17th August, 1838.

(Signed) DAVID L. McCOY, *Not. Pub.*

$16,666 66⅔.

Three years after date, we promise to pay to the order of A. F. Rightor, at the Mechanics and Traders' Bank, New Orleans, the sum of sixteen thousand six hundred and sixty-six dollars and

sixty-six [and] ⅔ cents, with interest on the same, at the rate of six per cent. per annum, for value received.

(Signed) H. T. WILLIAMS,
CHARLES BISHOP.

(Endorsed.)

A. F. RIGHTOR.

Demand and protest waived.

(Signed) A. F. RIGHTOR.

"Ne varietur." Secured by mortgage passed before me this 17th day of August, 1838.

(Signed) DAVID L. McCOY, *Not. Pub.*

STATE OF LOUISIANA, *city of New Orleans:*

Be it known, that on this seventeenth day of August, in the year of our Lord one thousand eight hundred and thirty-eight, and of the independence of the United States of America the sixty-third, before me, David Lawson McCoy, notary public in and for the city and parish of New Orleans, and State of Louisiana, duly commissioned and sworn, and in presence of the subscribing witnesses, personally came and appeared John Hagan, senior, of New Orleans, who declared, that for the consideration hereinafter expressed, he does by these presents grant, bargain, sell, convey, and deliver, with full warranty against all incumbrances arising from his own acts and deeds, but against none others, unto Henry T. Williams and Charles Bishop, both of Donaldsonville, in the parish of Ascension, in this State, and to their heirs and assigns forever, all and singular the following four tracts of land, with the back concessions, to wit:

1st. A certain tract of land containing one thousand acres on the waters of the river Mississippi, in the vicinity of the county of Point Coupee, surveyed by virtue of *warrant number three*, and bounded as follows: beginning at a stake standing on the margin of the Mississippi, in the lower line of warrant number two; and thence running down the Mississippi, on the margin thereof, south fifty-one degrees east, sixty chains, to a stake; and thence south thirty-nine degrees west, one hundred and twenty-six chains twenty-five links; thence north forty-eight degrees west, ninety-eight chains forty links, to a cypress in the lower line of warrant No. two; and thence north fifty-six degrees east, one hundred and twenty-six chains twenty-five links, to the margin of the Mississippi and place of beginning, bounded in front by the Mississippi, in the rear by vacant lands, and on the upper side by warrant No. 2, and on the lower side by warrant No. four.

2d. Another certain tract of land containing one thousand acres on the waters of the river Mississippi, in the vicinity of the county of Point Coupee, surveyed by virtue of warrant No. six, and bounded as follows, viz: beginning on or about three miles below the mouth

of the Bayou *Chafalaya*, at a mulberry post and willows marked L. F.; and thence running up the Mississippi north twenty degrees west, sixty chains; thence south twenty degrees west, eighteen chains; thence north seventy degrees west, twenty-five chains ninety five links, to a mulberry sapling, on the margin of the river, marked L. F.; thence south twenty degrees east, twenty-five chains ninety-five links; thence north twenty degrees east, eighteen chains; thence south seventy degrees east, sixty chains, to a cypress; and thence north twenty degrees east, one hundred and sixteen chains eighty-five links, to the place of beginning.

3d. Another certain tract of land containing one thousand acres on the waters of the Mississippi, in the vicinity of the county of Point Coupee, surveyed by virtue of warrant No. eight, and bounded as follows, viz: beginning at the lower line of warrant No. seven, at a stake marked No. 2, standing on the edge of the cane and on the high bank; thence running down the Mississippi, south seventy degrees east, eighty-five chains ninety-five links, to an elm post; thence south twenty degrees west, one hundred and sixteen chains thirty-five links; thence north seventy degrees west, eighty-five chains ninety-five links; and thence north twenty degrees east, one hundred and sixteen chains thirty-five links, to the place of beginning.

4th. Another certain tract of land containing one thousand acres on the waters of the river Mississippi, the vicinity of the county of Point Coupee, surveyed by virtue of warrant No. nine, and bounded as follows, viz: beginning at the lower line of warrant No. eight, at an elm post; and thence running down the Mississippi, on the margin thereof, south seventy degrees east, thirty-three chains fifty links; thence south twenty degrees west, twelve chains forty links; thence south seventy degrees east, twenty-nine chains nine links; thence south twenty degrees west, ten chains seventy links; thence south seventy degrees east, twenty-three chains eighty-one links; thence south ninety degrees west, one hundred and sixteen chains thirty-five links, to a cypress marked No. four; thence north seventy degrees west, twenty-three chains eighty-one links; thence north twenty degrees east, ten chains seventy links; thence north seventy degrees west, twenty-nine chains nine links; thence north twenty degrees east, twelve chains forty links; thence north seventy degrees west, thirty-nine chains fifty links, to a post; and thence north twenty degrees east, one hundred and sixteen chains thirty-five links, to the place of beginning; together with all the batture or alluvion which has been already formed, or which may be hereafter formed, in front of said four tracts of land. And all the rights, privileges, and appurtenances thereunto belonging, being the same tract of land patented to General La Fayette by James Madison, President of the United States of America, as will appear by these presents, bearing date the twenty-seventh day of April, 1810, and one patent bearing date the twenty-fifth day of January, 1810.

The said General La Fayette having sold said tracts of land to Sir John Coghill, baronet, by act of sale, bearing date the sixteenth day of March, (1812,) and recorded in the office of the parish judge, of the parish of Point Coupee, on the 2d day of January, 1834. The said Coghill, by his last will and testament, devised said tract of land to his brother, Sir Josiah Coghill, Coghill baronet, which will was ordered to be executed in the parish of Point Coupee, by the honorable Judge Robin, on the thirty-first of December, 1833; and the said Josiah Coghill, Coghill baronet, sold said tracts of land to the said John Hagan, senior, the present vendor, by deed of sale, bearing date at Dublin, on the ninth day of May, eighteen hundred and thirty-five, which was recorded in the office of the parish judge, of the parish of Point Coupee, some time in the year 1836.

5th. A certain tract of land adjacent to and back of No. 3, front tract, situated in townships two and three, range eight east, and containing one thousand superficial acres, which the said John Hagan, senior, acquired by purchase from the Government of the United States, as will appear by the certificate of Maurice Cannon, receiver of public moneys for the south eastern district of Louisiana, dated at New Orleans, on the fifteenth of June, 1836, and numbered 997.

6th. Another certain tract of land adjacent to and back of No. 6, front tract, situated in township one, range eight east, and containing one hundred and ninety $\frac{70}{100}$ superficial acres, which the said John Hagan, senior, also acquired by purchase from the Government of the United States, as will appear by the certificate of the said Maurice Cannon, receiver of public moneys for the southeastern district of Louisiana, dated at New Orleans, on the fifteenth of June, 1836, and numbered 996.

This sale is made by the said John Hagan, senior, with the express stipulation and condition, that he shall not be bound by the vendor's warranty of title, and that he does not guarantee the said purchasers against the existence of any defects of title or incumbrance whatever, except such as may have arisen from his own acts; and that he merely puts them in his place and stead, as proprietors of said lands, in the same manner as if they had bought the same directly from his vendors, and not from him, the said John Hagan, senior.

And the said John Hagan, senior, further declared, that he does hereby subrogate the said purchasers to all his rights and actions of warranty, against all former proprietors and owners of said lands, hereby authorizing said purchasers to enjoy and exercise said rights and actions in the same manner as he himself might or contra have done.

This sale is made for, and in consideration of, the price and sum of fifty thousand dollars, payable on a credit of one, two, and three years, with interest thereon, at the rate of six per cent. per annum, from date until paid—four approved endorsed notes, bearing mort-

gage on this and other property until final payment. Now, in compliance with said terms and conditions, the said purchasers have delivered to the said vendor, who hereby acknowledges the receipt thereof, three promissory notes for the sum of sixteen thousand six hundred and sixty-six dollars and sixty-six and two-thirds cents each, drawn by the said H. T. Williams and Charles Bishop, to the order of, and endorsed by, A. F. Rightor, all dated the first of August instant, (1838,) and payable respectively in one, two, and three years after date, at the Mechanics and Traders' Bank of New Orleans, with interest thereon at the rate of six per centum per annum from date until paid. And the said Charles Bishop, herein acting in his own name and behalf, and as the attorney in fact of the said H. T. Williams, by virtue of the annexed power of attorney, dated at Donaldsonville, on the first of August instant, (1838,) signed by the said Henry T. Williams in presence of two witnesses. And the said appearer, acting in his said capacity, declared, that he does hereby bind himself and his said constituent to furnish, within the shortest delay possible, mortgages to the said John Hagan, senior, on a thousand acres of land in the parish of Point Coupee, belonging to the said Williams, and on sixteen hundred acres of land situated in Arkansas, belonging to the said Bishop, as additional security for the payment of the above described notes, with the interest thereon, given by them to the said John Hagan, senior, in payment of the consideration of the sale.

And the said Charles Bishop, acting as aforesaid, further declared, that he and his said constituent are well aware that there are claims against said lands, made by squatters and settlers, but that they are nevertheless satisfied with the said Hagan's title to said lands, and are willing to *to* accept this sale without any guarantee by the said Hagan, against any claims, defects of title, or incumbrances whatever, except such as may have arisen from his own acts, hereby binding himself and his said constituent, to defend all suits that have already been instituted, or that may hereafter be instituted, by any persons claiming or to claim said lands, or any portion or portions thereof, other than the said John Hagan, senior, or his heirs.

This sale is further made with the express stipulation and condition, that the purchasers shall not refuse to pay said notes punctually as they mature, upon pretence of the lands being pre-occupied, or any flaw or defect in the title; and that in the event of the first, or any other of said notes, not being punctually paid, the lands herein conveyed shall revert to the said John Hagan, senior, without the delay, trouble, or expense of judicial proceedings, the said purchasers giving up all right and title to the same, and abandoning to the said Hagan, as an equivalent for the non-performance of the contract, the lands mortgaged by them in Point Coupee and Arkansas, as additional security for the payment of said notes.

And no certificate from the recorder of mortgages for the said parish of Point Coupee having been produced, to be annexed to

this act as evidence of what mortgages, if any, *was* recorded against said property, the said John Hagan declared, that there does not exist any mortgage recorded against said lands; and the said Charles Bishop, acting as aforesaid, declared, that he is satisfied with the truth of said Hagan's declaration, and dispenses with the production of such certificate, hereby exonerating the undersigned from all damage or responsibility which he may suffer by reason, or in consequence, of his having passed this act without the production of such certificate. And to secure the payment of the aforesaid notes at maturity, which have been paraphed ne varietur by me, notary, to identify them with this act. The lands herein conveyed are hereby specially mortgaged and hypothecated by the said Charles Bishop, acting as aforesaid, who binds himself and his said constituent, not to alienate or incumber the same to the prejudice of this mortgage.

And the said Charles Bishop, acting as aforesaid, does hereby accept, for himself and his said co-purchasers, this act of sale, subject to all the stipulations and conditions herein set forth.

Thus done and passed in my office, in the city of New Orleans aforesaid, in presence of Messrs. Hypolite Hartmane and Jules Garson Arnoult, both of this city, competent witnesses, who hereunto sign their names with the said parties and me, notary.

(Signed) JOHN HAGAN,
CHARLES BISHOP,
H. HARTMAN,
J. G. ARNOULT,
DAVID L. McCOY, *Not. Pub.*

I do hereby certify the foregoing to be a true copy of the original, New Orleans, this 24th Sept., 1839.

(Signed) DAVID L. McCOY, *Not. Pub.*

DONALDSONVILLE, 1*st August*, 1838.

Mr. Charles Bishop, of this place, is firmly authorized to act for me in the acknowledgment and receipt of a conveyance of five thousand two hundred acres of land from John Hagan, of the city of New Orleans, being from patents to General M. Lafayette, and the double concession thereto, and otherwise to do and perform all things necessary to be done on my part towards receiving the same.

(Signed) H. T. WILLIAMS.

Signed and sealed in presence of us.

(Signed) ANDREW McCOLLAM,
GEORGE O'BRIEN.

I certify the foregoing to be a true copy of the procuration annexed to said act of sale.

(Signed) DAVID L. McCOY, *Not. Pub.* [L. S.]

NEW ORLEANS, 24*th September*, 1839.

[REC. LXX, J. T. 1843.]—4

STATE OF LOUISIANA, *Parish of Point Coupee:*

I, the undersigned, judge of the parish of Point Coupee, do hereby certify, that the foregoing act of sale was duly recorded in my office on the 11th day of Dec., 1838.

In testimony whereof, I have hereunto set my official signature and seal, on the 29th October, 1839.

(Signed) THOMAS J. COOLEY, *Parish Judge.* [L. S.]

J. C. Vanwickle, sheriff of the parish of Point Coupee, to John Hagan, senior.

Whereas I, J. C. Vanwickle, sheriff of the parish of Point Coupee, State of Louisiana, by virtue of a writ of fieri facias, to me directed by the honorable the second district court, in and for the parish of Ascension, against the goods and chattels, land and tenements, of Henry T. Williams, and Abraham F. Rightor, and Charles Bishop, at the suit of John Hagan, senior, and known on the docket of said court by No. 965, did seize on all and singular the following four tracts of land, with the back concessions:

1st. A certain tract of land containing one thousand acres on the waters of the Mississippi, in the vicinity of the county of Point Coupee, surveyed by virtue of a warrant No. 3, and bounded as follows, viz: beginning at a stake standing at the margin of the Mississippi, on the lower line of warrant No. 2; and thence running down the Mississippi, on the margin thereof, south fifty-one degrees east, sixty chains, to a stake; and thence south thirty-nine degrees west, one hundred and twenty-six chains twenty-five links; thence north forty-eight degrees east, ninety-eight chains forty links, to a cypress on the lower line of warrant No. 2; and thence north fifty-six degrees east, one hundred and twenty-five chains twenty-five links, to the margin of the river Mississippi and place of beginning. Bounded in front by the Mississippi; in the rear by vacant land; and on the upper side by warrant No. 2; and on the lower side by warrant No. 4.

2d. Another tract of land, containing one thousand acres, on the waters of the river Mississippi, in the vicinity of the county of Point Coupee, surveyed by virtue of warrant No. 6, and bounded as follows, viz: beginning in or about three miles below the mouth of the bayou Chafulaya, at a mulberry post and willows marked L. F., and thence running up the Mississippi, north twenty degrees west, sixty chains; thence south twenty degrees west, eighteen chains; thence north seventy degrees west, twenty-five chains ninety-five links, to a mulberry sapling on the margin of the river, marked L. F.; thence south twenty degrees east, twenty-five chains ninety-five links; thence north twenty degrees east, eighteen chains; thence south seventy degrees east, sixty chains, to a cypress; thence north twenty degrees east, one hundred and sixteen chains eighty-five links, to the place of beginning.

3d. Another certain tract of land, containing one thousand acres, on the waters of the river Mississippi, in the vicinity, in the county

of Point Coupee, surveyed by virtue of warrant No. 8, bounded as follows, viz: beginning at the lower line of warrant No. 7, at a stake marked No. 2, standing on the edge of the cane on a high bank; thence running down the Mississippi, south seventy degrees east, eighty-five chains ninety-five links, to an elm post; thence south twenty degrees west, one hundred and sixteen chains thirty-five links; thence north seventy degrees west, eighty-five chains ninety-five links; and thence north twenty degrees east, one hundred and sixteen chains thirty-five links, to the place of beginning.

4th. Another certain tract of land, containing one thousand acres, on the waters of the Mississippi, in the vicinity of the county of Point Coupee, surveyed by virtue of warrant No. 9, and bounded as follows, to wit: beginning at the lower line of warrant No. 8, at an elm post, and thence running down the Mississippi, on the margin thereof, south seventy degrees east, thirty-three chains fifty links; thence south twenty degrees west, twelve chains forty-five links; thence north seventy degrees east, twenty-nine chains nine links; thence south twenty degrees west, ten chains and seventy links; thence south seventy degrees east, twenty-three chains eighty-one links; thence south twenty degrees west, one hundred and sixteen chains thirty-five links, to a cypress marked No. 4; thence north twenty degrees west, twenty-three chains eighty-one links; thence north twenty degrees east, ten chains seventy links; thence north seventy degrees east, twelve chains and forty links; thence north twenty degrees west, thirty-three chains fifty links, to a post; thence north twenty degrees east, one hundred and sixteen chains thirty-five links, to the place of beginning; together with all the batture alluvial which has been already, or which may be hereafter, formed in front of the said four tracts of land, and all the rights, privileges, and appurtenances thereunto belonging. Also,

5th. A certain tract of land adjacent to and back of No. 3, front tract, situate on townships 2 and 3, range 8 east, and containing one thousand superficial acres.

6th. Another certain tract of land adjacent to and back of No. 6, front tract, situate in township No. 1, range 8 east, and containing one hundred and ninety $\frac{70}{100}$ superficial acres, being the same tracts of land patented to General Lafayette, by James Madison, President of the United States, as will appear by these presents, bearing date the 27th April, 1810, and one patent bearing date the 25th of January, 1810; which tracts of land, agreeably to the certificate of the recorder of mortgages in this parish, appears to be encumbered with a special mortgage in favor of Abraham F. Rightor, for the sum of ten thousand seven hundred and seventy-one dollars and fifty-six cents, with the interest; and also a judicial mortgage in favor of Etienne Lamoranclin, for the sum of seven thousand two hundred and eighty dollars, with the interest; and also a judicial mortgage in favor of Robert W. Boyd, for the sum of three thousand

one hundred and ninety-seven dollars and ten cents, with interest; and also a judicial mortgage in favor of Labadie & Jurquelin, for the sum of one thousand twenty-nine dollars and four cents, with the interest; and also a judicial mortgage in favor of Maurin and Flattery, for the sum of three hundred and eight dollars, with the interest; and also a judicial mortgage in favor Lisum and Dupuis, for the sum of three hundred dollars, with the interest; and also a judicial mortgage in favor of Edmund Flattery, and also for the sum of five hundred and seven dollars, with the interest. And having posted up the advertisements, in the French and English language, during thirty full days—one at the court house and the others at the most public places in the parish, and having exposed the above described tracts of land to public sale, according to law, and subject to all encumbrances, Richard Hagan, for John Hagan, senr., became the purchaser, for seven dollars per acre, making the sum total for said land the sum of thirty-six thousand three hundred and thirty-four dollars and thirty cents; which sum I do hereby acknowledge to have received, and place the same to the credit of the cash payment on said writ. Terms of sale, thirty-three thousand three hundred thirty-three dollars and thirty-three cents, with six per cent. interest from first August, 1838, and the costs of suit and cost of protest cash. And the purchaser to assume the sum of sixteen thousand six hundred and sixty-six dollars sixty-six two-third cents, with six per cent. interest from 1st August, 1838, and payable 1st August, 1841, and mortgage to remain on the property until full and final payment.

Now, therefore, know all men by these presents, that I, the said sheriff, do, in consideration of the premises, and in virtue of the act in such case made and provided, grant, bargain, sell, assign, and set over to the said John Hagan, senior, his heirs and assigns, all the above described tracts of land, and all the right, title, interest, and demand which the said Henry T. Williams, Abraham F. Rightor, and Charles Bishop had on the 9th January last past, and at any time since had, in and to the said described tracts of land, or any part thereof, to hold the same to the said John Hagan, senior, his heirs and assigns for ever.

In testimony whereof, I have hereunto set my signature, this the 22d day of February, in the year of our Lord, 1841, and in the sixty-fifth year of the independence of the United States.

(Signed) J. C. VAN WINCKLE,
Sheriff of the parish of Point Coupee.

STATE OF LOUISIANA.
Parish of Point Coupee:

I, the undersigned, judge of the parish of Point Coupee, do hereby certify that the foregoing sheriff's deed was duly recorded in my office on this day among the notarial acts.

Witness my official signature and seal this 25th day of February, 1841.

(Signed) THOS. J. COOLEY,
Parish Judge.

Recorded this 18th March, 1841.

(Signed) JAMES BARRY, *Dy. Clerk.*

J. C. Van Winkle, sheriff, second district court, parish of Ascension, of P. Coupee, to John Hagan, senior.

On motion of Thomas E. Ives, of counsel of the plaintiff in said suit, it is ordered that Jacob Van Winckle, sheriff of the parish of Point Coupee, have leave to amend his act of sale of the land seized and sold by him under a fi. fa. issued in the above case, John Hagan, senior, vs. Henry T. Williams et als., which act of sale is dated on 22d of February, A. D. 1841; and that said sheriff be authorized to make said act of sale in conformity to law, by declaring that said land was sold subject to no encumbrance.

Amendment.

In obedience to an order of the honorable the district court of the second district, parish of Ascension, I have amended the act of sale *to* me passed to John Hagan, senior, on the 22d February, 1841, for the land seized, and by me sold, under a fi. fa. in the above case of John Hagan, senior, vs. Henry T. Williams and al., to wit, Lafayette lots No. three, six, seven, and nine, and the back concession to No. three and six, by striking out the word "all" in the last line of the third page, and inserting the word no.

(Signed) J. C. VAN WINCKLE, *Shff.*

Filed 26th April, 1841.

(Signed) JAMES BARRY, *Dy. Clerk.*

Recorded 26th April, 1841.

(Signed) EDWD. F. NICHOLLS, *Clerk.*

Return made by sheriff on execution.

Received on the 7th January, 1841, and on the same day seized on all the right, title, and interest, or claim *of* defendants, H. T. Williams, A. F. Rightor, and Charles Bishop *has* to all and singular four tracts of land with back concessions, a full description of which property is hereunto annexed for reference, and prayed to be taken as part of this return; notified defendants of this seizure, as will appear by notice of seizure hereunto annexed, advertised 20th January, 1841, as the law directs.

(Signed) J. C. VAN WINCKLE, *Sheriff.*

February 20th, 1841, being the day of sale, repaired to the courthouse, and, after having said four tracts of land, with the back concessions, estimated, which estimation is hereunto annexed, and

complying with all the formalities of the law, and announcing to the public the nature and conditions of the sale, did proceed with the sale; and, after frequently and repeatedly crying said property, Richard Hagan, for John Hagan, sen., became the purchaser for the price of seven dollars per acre, he being the last and highest bidder, making the total sum thirty-six thousand three hundred and thirty-four dollars and ninety cents, for five thousand one hundred and ninety acres and $\frac{70}{100}$ of an acre of land; which sum I do hereby acknowledge to have received, and paid the same over to John Hagan, sen., on account of the cash payment, after deducting the amount of costs in this suit.

Terms of sale: Thirty-three thousand three hundred and thirty-three dollars and $\frac{33}{100}$, with six per cent. int. from 1st August, 1838, and the cost of suit and cost of protest, cash, and purchaser to assume the sum of sixteen thousand six hundred and sixty-six dollars $66\frac{2}{3}$ cents, with six per cent. int. from 1st Aug., 1838, and payable 1st August, 1841, and mortgage to remain on the property until full and final payment, and this writ returned on the 22d day of February, 1841.

Signed, J. C. VAN WINCKLE,
Sheriff of the parish of Point Coupee.

Filed 18th March, 1841.
Signed, JAMES BERRY, *Dy. clerk.*

I, Edward F. Nicholls, clerk of the 2d district court of the State of Louisiana, in and for the parish of Ascension, by these public presents, certify the foregoing thirteen pages to contain true copies from the original documents on file and of record in my office.

Witness my official signature and seal, Ascension, this 21st Sept., 1841.

Signed, EDWARD F. NICHOLLS, *Clerk.*

Copy of document marked "C."

Know all men by these presents, that I, the undersigned John McCollom, hereby authorize and empower B. W. Lawes, of the parish of Ascension, to act as my agent and attorney in fact in all matters and things growing out of, and relating to, a twelve months' bond given by me for the purchase of a quantity of land at the sale made by the United States' marshal for the eastern district of Louisiana, in the case of Eager vs. Rightor and Williams; to defend me against all suits which may be brought against me on said ; to bring suits of injunction against any process which may issue thereon; and to proceed in the premises, to all intents and purposes, as fully as I could were I present and acting therein.

New Orleans, *July 24th*, 1841.

Signed, JOHN McCOLLOM.

Witness: John Larue.

1240

Copy of document marked "D."

Instrument annexed.

This indenture, made and entered into this twenty-sixth day of February, in the year eighteen hundred and thirty-nine, between Charles Bishop, of the parish of Point Coupee, of the one part, and Henry T. Williams and Abraham F. Rightor, of the parish of Ascension, and Andrew McCollom, of the parish of Point Coupee, of the other part, witnesseth: That, for the consideration hereinafter expressed, the said Charles Bishop hath [granted,] and by these presents doth grant, bargain, sell, and convey, to the said party of the second part, their heirs and assigns forever, all his, the said party of the first part, right, title, interest, and claim, in and to all the lands, tenements, goods, chattels, slaves, stock, horses, utensils, and furniture, purchased by said Bishop of John M. Phillips, and by said Bishop and Williams of John Hagan, as will more fully appear by reference to the conveyances made in the year eighteen hundred and thirty-eight, and all that has been attached to said premises since said purchase, or may have accrued thereon, and also all rights and credits arising from the same; to have and to hold said property, with all the rights, privileges, and appurtenances thereunto belonging, unto them, the said party of the second part, their heirs and assigns forever; and the said Charles Bishop stipulates and agrees, with the said party of the second part, that his wife, Phebe Bishop, shall make to them a full and complete relinquishment of dower, and all interest and right she may have to said property; and further covenants and agrees, that he, the said Charles Bishop, for himself, his heirs, executors, and administrators, unto the said party of the second part, their heirs and assigns, the said property, with all the rights and privileges thereunto belonging, against all right, claim, and interest accruing by, through, and under him, will warrant and forever defend. And in full consideration for the said property, the said party of the second part have and do agree and bind themselves to assume and pay the notes, executed by said Bishop, which were given to said John M. Phillips, (provided the same ought in justice and according to law to be paid,) and also the notes given by said Bishop to John Hagan, so as to save the said Bishop from all molestation on account of the same; and the said party of the second part have given to said Bishop their joint promissory note, for the sum of two thousand four hundred dollars, to Mrs. Phebe Bishop, at the instance of said Bishop; their other joint promissory note for two thousand dollars; and to A. F. Rightor, their promissory note for six hundred and sixty-three dollars, and also two horses; and further agree to give their joint promissory notes for any balance which may appear to have been paid by said Bishop for expenses of said property, after deducting the amount he may have received from the profits of said property, said notes being made payable twelve months after date,

without interest and without mortgage on the property, and also without the vendor's privilege.

In witness whereof, the parties have hereunto signed their names, in presence of Henry H. Roe and Robert Maurin, of the parish of Point Coupee, both competent witnesses.

Signed, CHARLES BISHOP,
A. F. RIGHTOR,
ANDREW McCOLLOM,
H. T. WILLIAMS.

HENRY ROE,
ROBERT MAURIN.

Filed 21st July, 1841.

Signed, EDWARD F. NICHOLLS, *Clerk*.

Waiver.

I hereby acknowledge service of the within contained petition, and waive citation, without prejudice to the clerk's charge for costs of copy.

Signed, JOHN McCOLLOM.

21*st July*, 1841.

Petition in intervention.

Into court, in his own proper person, comes Abraham F. Rightor, of the parish of Ascension, and, first praying leave to intervene in the above entitled cause, respectfully represents:

That, on the 25th day of February, 1839, your intervenor, together with Andrew, the plaintiff in this suit, and Henry T. Williams, did, by act, under private signature, (a copy of which is filed with plaintiff's petition,) acquire from Charles Bishop, each in the proportion of one undivided third, the following described property, to wit:

1st. A tract of land situate, lying, and being in the parish of Point Coupee, on the right bank of the river Mississippi, and more fully described in plaintiff's petition.

2d. Four slaves attached then to said plantation, of the names and ages following: Kit, a negro man, aged about 26 years; George, a negro man, aged about 27 years; Isaac, a negro boy, about 17 years; and Priscilla, a negro woman, aged about 23 years.

3d. Certain moveable property, also attached to said plantation, and described in plaintiff's petition, to which reference is prayed.

Your intervenor further shows that, on or about the 22d day of August, 1840, the marshal of the circuit court of the United States, holding sessions in and for the eastern district of Louisiana, acting or pretending to act under an execution out of said court issued upon a judgment therein rendered in a certain suit, wherein one Jennison Eager was plaintiff, and Henry T. Williams and your intervenor, defendants, offered the hereinbefore described property

for sale, and the same adjudicated to John McCollom, defendant herein, for the sum of five thousand four hundred and forty-two dollars [and] forty-one cents.

That, in virtue of adjudication, and the deed of sale in conformity therewith, by the said marshal to him made, the said John entered into possession of the said land, slaves, and moveable effects, and the said slaves and moveable effects still continues to possess. Now, your intervenor respectfully avers that the said sale was made by the marshal to the said John McCollom, [and] is in law vicious and null; that no title to the property purported to be transferred thereby did or legally could pass to the said John McCollom, but that said sale is of no validity and void, and must be so declared by this honorable court, for the following reasons, to wit:

1st. Because the formalities required by law were not fulfilled by the marshal in advertising said property for sale, the advertisement thereof being defective in time and form.

2d. Because the property seized and sold by the marshal was not sold at the seat of justice of the parish of Point Coupee, as required by law.

3d. Because the bid by which the said property was adjudicated to the said John McCollom did not amount to a sum sufficient to discharge the special mortgages existing thereon anterior to the rights of the seizing creditor.

4th. That three of the slaves adjudicated to the said John McCollom, to wit, Kit, Priscilla, and her infant William, were *were* not produced and exhibited on the day of sale, as required by law.

Now he avers that said John McCollom, in view of the nullity of the said sale, is liable to your intervenor for the hire of the said slaves from the said 22d of August, 1840, that is, for one-third of the hire thereof, said third amounting to two hundred dollars per annum; which said sum to pay, and said slaves and moveables to deliver, although often amicably requested so to do, the said John McCollom doth utterly neglect and refuse. Wherefore, in virtue of the premises, your intervenor prays that plaintiff and defendant, both residing in the parish of Ascension, be notified of this petition in intervention, and that proper proceedings [be] had in the premises; that the said sale of the 22d of August, 1840, in so far as it respects intervenor's rights in the slaves and moveable property heretofore mentioned, to be declared null and void by decree of this honorable court; that a writ of possession issue therefor in favor of your intervenor, and that defendant be further condemned to pay him damages, for his detention of said slaves, at the rate of two hundred dollars per annum. He further prays his costs and all other general and equitable relief; and as in duty bound.

Signed, A. F. RIGHTOR.

Filed 20th September, 1841.

Signed, EDWARD F. NICHOLLS, *Clerk*.

[Rec. lxx, J. T. 1843.]—5

Citation.

THE STATE OF LOUISIANA, *2d district court,*
Parish of Ascension, the State and court aforesaid:

No. 1,072.

To John McCollom of said parish: You are cited to comply with the prayer of plaintiff's petition, whereof a copy accompanies this process, or to file your answer thereto in writing within ten days from service hereof, in the office of the clerk of said court at the court house in the town of Donaldson.

Witness the Hon. Thos. C. Nicholls, judge of said court, this 21st Sept., 1841.

(Signed) EDWARD F. NICHOLLS, *Clerk.*

And afterwards the following bond was filed, to wit:

Oct. 1st, 1841.

Know all men by these presents, that we, John McCollom and John Conway, of the parish of Ascension, and State of Louisiana, are held and firmly bound unto Jennison Eager in the sum of eight thousand dollars lawful money of the United States of America, to be paid to the said Jennison Eager, his heirs, executors, administrators and assigns, for which payment well and truly to be made, we bind ourselves, and each of us by himself, and each of our heirs, executors and administrators, firmly by these presents; sealed with our seals and dated the 28th day of September, in the year of our Lord 1841.

Whereas, John McCollom has this day presented a petition to the honorable the circuit court of the United States, ninth circuit eastern district of Louisiana, praying for a writ of injunction.

Now, the condition of the above obligation is, that we, the above bound John McCollom and John Conway, will well and truly pay to the said Jennison Eager the defendant in said injunction, all such damages as he may recover against us in case it should be decided that the said injunction was wrongfully obtained.

(Signed) B. W. LAWES, Agent for
JOHN McCOLLOM,
JOHN CONWAY.

Signed, sealed, and delivered in the presence of
ROBERT MAURIN,
P. A. MAURIN.

I, G. F. Connely, a notary public in and for the parish of Ascension, duly commissioned and sworn, certify that the within act under private signature has been duly proved before me according to law, by Robert Maurin, one of the subscribing witnesses thereto, and made of record in my office.

In testimony whereof, I have hereunto set my hand and seal of office, at the parish of Ascension, the twenty-
[L. s.] eighth day of September, in the year of our Lord eighteen hundred and forty-one.

(Signed) G. F. CONNELY, *Notary Public.*

Afterwards, on the 20th of December, 1841, the following entry was made in the records of this court; and on the same day and year above written a copy of the same was issued and served on J. C. Larue, in the words and figures following, to wit:

U. S. CIRCUIT COURT,
9th circuit, eastern district of Louisiana:

MONDAY, 20*th December*, 1841.

Present: the Hon. Theo. H. McCaleb, district judge, the Hon. John McKinley, presiding judge, absent.

JENNISON EAGER
vs.
WILLIAMS AND RIGHTOR. } No. 535.

On an injunction obtained by Benj. W. Lawes against an injunction on a twelve months bond.

On motion of C. M. Jones of counsel for Jennison Eager, it is ordered by the court that Benjamin W. Lawes show cause on Tuesday, 4th January, 1842, at 10 o'clock A. M., why the injunction in this case should not be dissolved, with twenty per cent. damages, ten per cent. interest, and three hundred dollars special damages incurred as a lawyer's fee on the following grounds:

1st. That B. W. Lawes, under the power of attorney from John McCollom, had no authority to institute suit in his own name, and that all his proceedings are therein illegal and void.

2d. That the affidavit is insufficient, not being sworn to before the judge or the clerk of this court, as required by law.

4th. That the facts and statements, as disclosed in the petition and accompanying documents, do show that neither plaintiff in injunction nor his principal had any right to obtain any injunction against the execution either in whole or in part.

Marshal's Return.

Received 21st Dec. 1841, and same day served a copy of the within rule on J. C. Larue, esq., in person, in the city of New Orleans.

(Signed) A. S. ROBERTSON, *U. S. Marshal.*
By WM. K. STYLES, *Dy. U. S. Marshal.*

The following entry of record was made the 4th of January, 1842.

U. S. Circuit Court,
9th circuit, eastern district of Louisiana:
Tuesday, *4th of January*, 1842.

The court met pursuant to adjournment. Present: the Hon. Judge McCaleb, district judge; the Hon. John McKinley presiding judge, absent.

Jennison Eager
vs.
Williams and Rightor. } No. 535.

The rule heretofore taken in this case and returnable this day came on. C. M. Jones, esq. appearing for the plaintiff, and Isaac T. Preston, esq. for the defendants; and thereupon by consent the said rule was submitted to the court upon the brief to be furnished by the counsel.

And afterwards the following judgment was entered up and recorded on the 14th day of February, 1842.

U. S. Circuit Court,
9th circuit, eastern district of Louisiana:

The court met pursuant to adjournment. Present: the Hon. Theo. H. McCaleb, district judge; the Hon. John McKinley, presiding judge, absent.

Jennison Eager
vs.
Rightor and Williams. } No. 535.

In this case the court this day delivered its opinion, in conformity wherewith it is ordered, adjudged and decreed, that the injunction granted in this case be dissolved with 20 per cent. damages, ten per cent. interest, and three hundred dollars amount of fees of counsel employed by plaintiff, to be allowed as special damage and for costs of this suit.

Opinion of the court.

United States Circuit Court,
9th circuit, eastern district of Louisiana:

Jennison Eager.
vs.
Rightor & Williams. } No. 535.

On the 22d August, 1840, by virtue of a writ of fi. fa. which issued from this court in this case, the marshal of the United States seized and sold a certain tract of land situated in the parish of Point Coupee, together with five slaves, and a quantity of moveable property. This property was adjudicated to one John McCollom,

who, in accordance with the terms of the adjudication, executed with sureties a 12 months bond for the sum of $5,442 41/100, the amount of the purchase money; upon the expiration of the time for which the bond was given, the plaintiff in this suit caused an execution to issue, to enforce the payment thereof. To enjoin this execution, one Benjamin W. Lawes, acting under a special power of attorney for John McCollom, presented a petition to this court, setting forth, among other important grounds, that the one undivided third part of the property adjudicated to John McCollom was not, at the time of sale, the property of the defendants in this cause.

2d. That John McCollom has been sued for one-third of the property he purchased at the sale, by one Andrew McCollom.

3d. That he (John McCollom) has been evicted of all the land he purchased by John Hagan.

4th. That the sale of the property did not [take] place at the seat of justice of the parish of Point Coupee.

5th. That two of the slaves purchased were not exhibited at the day of sale.

6th. That A. F. Rightor, one of the defendants, is now disturbing herein (the said John McCollom) in the possession of the property.

In accordance with the prayer of the petition, an injunction was granted on the 1st of October last; a motion is now made by the counsel of the plaintiff in this suit to dissolve this injunction, on the following grounds:

1st. That B. W. Lawes had no right to enjoin the execution in his own name. The petition for an injunction should have been presented in the name of Jno. McCollom.

2d. That the injunction issued improperly, the affidavit to obtain it having been made before a justice of the peace of the State of Louisiana, not before an officer of this court.

3d. That it is apparent from the record that the injunction should not have issued. On the first point, I cannot concur with the counsel for the plaintiff, the objection to the competency of Lawes is fully answered by the counsel for the plaintiff. It is clear that he acted under a special power of attorney from John McCollom, to which he expressly refers in the commencement of his petition. His right, by virtue of such a power, to sue in his own name, is clearly recognised by the supreme court of this State, in the case of Eggleston vs. Caefox, and als. 4, N. S. 481; and in Lacaste vs. De Armas, 2 L. R., 263. There is, however, an insuperable objection to be urged against a most important allegation in the petition for an injunction. The petition is presented by Benjamin W. Lawes, and throughout he is styled the petitioner; and when reference is made to John McCollom, he is mentioned as the constituent of your petitioner. This is certainly correct, and shows clearly

the authority under which the petitioner was acting. But a very important omission appears in the allegation now under consideration. It is in these words: "Further he, your petitioner, represents that the time for which said bond was given has expired, and that the plaintiff in the suit No. 535, to wit, Jennison Eager, the judgment creditor, has caused an execution to issue from this honorable court on said bond, both against your petitioner and his sureties; and that *his* virtue thereof, the marshal of the United States for the eastern district of Louisiana hath seized the property of your petitioner and his securities, which he has advertised for sale, and which he asserts his determination to sell." Now, what is the inference to be drawn from this allegation? Why, that the property of the petitioner (Benjamin W. Lawes) and his securities, and not of his constituent, John McCollom, has been seized and advertised by the marshal for sale. The object of the injunction was clearly not to prevent the sale of the property of Benjamin W. Lawes, who it will not be pretended has any personal interest whatever in the controversy. We say, then, that this [is] a material omission in the most important and essential allegation in the petition, and renders it radically defective. It is an omission which the court cannot supply, and which it would not be justified in attempting to supply, when it takes into consideration both the previous and subsequent allegation, wherein John McCollom is expressly referred to as the *constituent* of the petitioner. This defect in the petition would, I think, be a good ground to dissolve the injunction. But as the 2d ground assumed by the counsel of the plaintiff involves an important principle of practice, I will now consider it. It is, that the injunction issued improperly, the affidavit having been made before a justice of the peace of the State of Louisiana, and not before an officer of this court. This point has been decided by Mr. Justice McLean, in the dissenting opinion he delivered in the case of the U. S. vs. Bailey, 9 Peters, 261. It was purposely waived by the majority of the court, in the decision delivered by Mr. Justice Story, as being immaterial to the issue then presented. The opinion of Judge McLean therefore stands unreversed; and coming as it does from a high source, I unhesitatingly make it my guide in the decision of the case now presented. "In the argument of this case for the prosecution," says he, "a great number of acts of Congress passed granting pensions, and for other purposes, in which State officers were specially authorized to administer oaths." This I take to be a conclusive exposition by Congress against the powers of State officers to administer oaths for federal purposes. Would a special authority have been vested in them for this purpose, if, in the opinion of Congress, they passed a general authority under the State laws? But one answer can be made to this inquiry. Congress knew well that State officers could exercise, under their general authority, no such power; and it was expressly conferred on them by an act of federal legislation. Now, there is

nothing in the acts of Congress conferring a special power on a justice of the peace, acting as such under State authority, to administer oaths in cases where such oaths are required in the courts of the United States; and I cannot concur with the counsel for the plaintiff in the injunction, when he says, that such a power having been conferred by a State law, the adoption by a rule of this court of the State practice as a mode of proceeding, is a recognition of that power in this court also. By a special enactment of Congress, the federal courts have their power, it is true, to adopt the mode of proceeding observed in the State courts. But it would be going much two far to say, that they can also empower the State officers to execute the writs, or perform other [duties] of a ministerial nature which might, under the mode of proceeding adopted, become necessary. The various writs authorized by the State laws are resorted to by this tribunal also to enforce its decrees, but the officers employed to execute those writs are not such as are peculiarly known to the State laws, but such as Congress have designated as the proper agents for the purpose. The State laws empower a justice of the peace to administer oaths for the purpose of obtaining an injunction, and the State tribunal must unquestionably respect the oaths so administered. But this tribunal, in adopting the law of the State which rendered an affidavit indispensably necessary in order to obtain an injunction, confers no power on a justice of the peace, acting as such under State authority, to take such an affidavit. For it would be thus conferring a power, the exercise of which it has no authority to enforce. Congress has conferred on the courts of the United States power to appoint commissioners to take the acknowledgment of bail and affidavits. Before these commissioners, or before the judge or clerk of this court, the affidavit upon which the injunction in this case issued ought to have been taken. It is therefore ordered, adjudged, and decreed that the injunction granted in this case be dissolved, with 20 per cent. damages, 10 per cent. interest, and $300, amount of fees of counsel employed by plaintiff, to be allowed as special damage, with all costs.

And afterwards, to wit, on the 21st of February, 1842, the following petition for writ of error was filed:

To the honorable the circuit court of the United States 9th circuit eastern district of Louisiana.

The petition of Benjamin W. Lawes, attorney in fact of John McCollom, respectfully shows, that he hath been advised that there is error in the judgment of this honorable court, rendered on the 12th of February, 1842, in the suit of petitioner, attorney in fact, &c., against Jennison Eager et als., in the matter of an injunction obtained to stay execution issued against the constituent of the petitioner, in the suit of Eager vs. Rightor and Williams;

and that said error is to the injury of the said constituent of petitioner in the sum of seven thousand dollars; and therefore petitioner prays that he may have a writ of error to the Supreme Court of the United States of America, and that on filing his bond for twelve thousand dollars, with E. E. Kittredge as security, and conditioned according to law, he may have stay of execution until the final decision can be obtained on the said writ of error, as in duty, &c.

Signed, JOHN LARUE, *for pet.*

Judge's order.

Let a writ of error be granted as prayed for.

Signed, THEO. H. McCALEB, *U. S. Judge.*

Afterwards the following appeal bond was filed February 21st, 1842.

SUPREME COURT OF THE UNITED STATES,
Ninth circuit, eastern district of Louisiana:

BENJAMIN W. LAWES, Attorney in fact of JOHN McCOLLOM
vs.
JENNISON EAGER in injunction in the suit of Jennison Eager vs. Rightor and Williams.
} In error.

Know all men by these presents, that we, Benjamin W. Lawes, attorney in fact for John McCollom and Ebenezer Eaton Kittredge, are held and firmly bound unto the above named Jennison Eager, in the sum of twelve thousand dollars to be paid to the said Jennison Eager, his executors and administrators, to which payment well and truly to be made, we bind ourselves and each of us jointly and severally, and our and each of our heirs, executors and administrators, firmly by these presents; sealed with our seals and dated this 21st day of February, 1842. Whereas, the above named Benjamin W. Lawes, attorney in fact of John McCollom, hath prosecuted a writ of error in the Supreme Court of the United States, to reverse the judgment of the circuit court of the 9th judicial circuit, eastern district of Louisiana, rendered in the above entitled suit. Now, therefore, the condition of this obligation is such, that if the said Benjamin W. Lawes, attorney, &c., shall prosecute his said writ of error to effect, and answer all damages and costs, if he shall fail to make good his plea, then this obligation shall be void, otherwise the same shall be and remain in full force and virtue.

Sealed and delivered in presence of
ANDREW McCOLLOM and WM. RAS. RIGHTOR.

(Signed) B. W. LAWES, Agent for [SEAL]
JOHN McCOLLOM,
B. E. KITTRIDGE. [SEAL]

Afterwards, to wit, on the 21st day of February, 1842, the following writ of error was lodged in the clerk's office, circuit court United States, Louisiana:

UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the marshal, the judges of the circuit court of the United States, for the 9th circuit and eastern district of Louisiana, greeting:

Because, in the record and proceeding, as also in the rendition of the judgment of a plea, which is in the said circuit court before you, or some of you, between Jennison Eager and Rightor and Williams, and John McCollom, a manifest error has happened, to the damage of the said John McCollom, as by his complaint appears; we being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command *of* you, if judgment be therein given, that then under your seal, distinctly and openly, you send the records and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of January next, in the said Supreme Court, to be then and there held, that the records and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness, the honorable Roger B. Taney, chief justice of the Supreme Court of the United States, the second Monday of January, 1842.

(Signed) DUNCAN N. HENNEN, *Clerk.*

Copy of the above lodged in the clerk's office of said court, same day.

(Signed) DUNCAN N. HENNEN, *Clerk.*

And afterwards, to wit, on the 23d day of February, 1842, the following entry was made and recorded:

WEDNESDAY, *February* 23, 1842.

The court met pursuant to adjournment.

Present: Honorable Theo. H. McCaleb, district judge. Hon. John McKinley, presiding judge, absent.

J. EAGER vs. RIGHTOR & WILLIAMS. } No. 535.

On motion of C. M. Jones, of counsel for J. Eager, it is ordered by the court, that B. W. Lawes, as agent of John McCollom, and John McCollom himself, show cause, in three days after service hereof, why the order granting an appeal from the dissolution of

the injunction in this case should not be rescinded, and the appeal be set aside, on the grounds that the surety is not good and solvent as required by law.

The following entry was made:

FRIDAY, *February* 25, 1842.

The court met pursuant to adjournment.

Present: The Hon. Theo. H. McCaleb, district judge. Hon. John McKinley, presiding judge, absent.

JENNISON EAGER vs. RIGHTOR & WILLIAMS. } No. 535.

On motion of J. C. Larue, esq., ordered, that the return day of rule, taken by plaintiff to show cause why the bond in error should not be set aside as insufficient, be enlarged until Saturday, the 5th March next, at 10 o'clock, A. M.

The following commission and return, which forms a part of the records of this suit, was issued from the clerk's office, 24th day of February, 1842:

Circuit court of the United States, for the ninth judicial circuit, holding sessions in and for the eastern district of La., to any judge or justice of the peace in the parish of Assumption, Louisiana:

Know ye, that reposing special trust and confidence in your integrity and ability, we hereby authorize and require you, that you call, and cause to come before you, E. E. Kittridge, Wm. H. Sparks, and others, and them duly examine on oath, touching and concerning certain matters and things in a cause now depending in the said court, wherein Jennison Eager is plaintiff, and Rightor and Williams are defendants, in the matter of John McCollom vs. Jennison Eager and others; and the same examinations, so taken and reduced to writing, you certify under your hand and seal, and send enclosed to this court without delay, to be read in evidence on the trial of said cause, and send also this writ.

Witness, the Hon. Roger B. Taney, chief justice of the Supreme Court of the United States, at the city of New Orleans, this 24th day of February, anno domini 1842, and the 66th year of the independence of the United States of America.

(Signed) DUNCAN N. HENNEN, *Clerk*.

U. S. CIRCUIT COURT, *9th circuit, E. Dst. of La.*

EAGER
vs.
RIGHTOR & WILLIAMS, in the matter of John McCollom vs. Eager et als.

Interrogatories to be propounded to E. E. Kittredge, W. H. Sparks, et als., witnesses to be examined under the annexed commission.

To E. E. Kittredge. Do you own property of the value of twelve thousand dollars, over and above all your debts and liabilities?

To W. H. Sparks et als. Is or is not E. E. Kittridge good and solvent security for twelve thousand dollars? If yea, state the facts on which you found the opinion, or the means from which you derive your knowledge.

(Signed) JOHN LARUE for McCOLLOM.

Cross interrogatories.

1st. Where does E. E. Kittridge reside? what does his property consist of? If land and negroes, state what quantity of land, and how many negroes.

2d. What amount of debts are due by E. E. Kittridge, either in open account, notes, or in any other manner? is his property mortgaged or not? Annex a certificate of the parish judge of the parish in which his property is located, showing what mortgages, lien, &c., exist on his property.

3d. Is E. E. Kittridge under protest? is he curator, administrator, or executor of any estate, or tutor of any minors? If yea, state what estates, and the amount of his various bonds.

4th. Is he security or endorser, or liable in any manner, for other persons' debts? If yea, state who he is security or endorser for, and for what amount.

Each and every one of these interrogatories are required to be answered by E. E. Kittridge himself.

(Signed) C. M. JONES,
For J. EAGER.

U. S. CIRCUIT COURT, *E. D. of La.*

JENNISON EAGER
vs.
RIGHTOR & WILLIAMS, in the matter of John McCollom vs. Eager et als.

Issued in the above entitled suit, by virtue of a commission addressed to any judge or justice of the peace, in and for the parish

of Assumption, State of Louisiana, by the U. S. circuit court, 9th judicial district, in and for the eastern district of Louisiana, tested the 24th day of February, anno domini 1842. I, the undersigned, one of the justices of the peace, in and for the parish of Assumption, State first aforesaid, duly commissioned and sworn, did call and cause to come before me, at my office in said parish, certain witnesses in behalf of plaintiff in the above entitled suit in injunction, to wit: John McCollom, and having first duly sworn the said witness, on the Holy Evangelists, to speak the truth, the whole truth, and nothing but the truth, touching the interrogatories and cross interrogatories annexed to said commission, and the said witnesses did severally and separately answer as follows, viz: E. E. Kittridge having been duly sworn, did answer to the 1st interrogatory—"Yes."

1st. Interrogatory. I reside in the parish of Assumption, State of Louisiana. My property consists, 1st, of a sugar plantation on which I reside, containing from 2,000 to 2,100 acres of land, with from sixty to sixty-five negroes, located and at work thereon, together with stock, teams, and every appurtenance necessary for carrying on a sugar plantation.

2d. Of another sugar plantation, situated in the parish aforesaid, containing about 1,000 acres of land, and about 30 negroes attached and at work on the same, with stock, teams, &c., necessary for its cultivation.

3d. Of 12 or 1300 acres of land situated in the State of Mississippi, near the Yazoo river.

4th. Of a dwelling house and double lot, situated on Virnunciation street, in the city of New Orleans.

2d interrogatory. I, as one of the original subscribers to the Citizen's Bank Stock, borrowed a stock loan, payable in instalments, agreeably to its charter, of about thirty-four thousand dollars. The instalments thus far due, have been regularly paid with the interest. The stock of said bank, on which said loan was made, I at present own, and a part of my land and negroes is mortgaged to said bank for its security. I owe the Bank of Louisiana, at Donaldsonville, four thousand five hundred dollars in instalments. I owe the Bank of Louisiana, at New Orleans, six thousand, *or* about four hundred dollars secured by mortgage on house and lot in the city of New Orleans. I owe one note of six thousand dollars, at present to estate of Theodore Ligon; one other of the same amount owned by Gov. E. D. White; and one of two thousand dollars owned by Mr. Ricards, (I believe.) All secured by mortgage on what is known as Point Blanc plantation, purchased by me from Marguerite Landry, wife of A. Le Blanc.

In notes and open account I owe from three to six thousand dollars. There is a tacit mortgage on my home plantation, in favor of my children, of about twenty thousand dollars, as I was informed by Judge Hubbard, parish judge.

3d. I am under no protest as drawer, but am as endorser on a small note of $3,000; but ere this, I am assured by the drawer, it will have been arranged so as to obviate the force of the protest. I am natural tutor to my own children, none of whom are of age.

4th interrogatory. I am security as endorser for six individuals, neighbors and friends, in an aggregate amount of about ten thousand dollars, but have no fear of the principals being able to meet the payment as they fall due.

Above I have given the amount of my debts and liabilities, and *and* opposed to which I estimate my property to be richly worth, in cash, from two hundred and sixty-five to three hundred thousand dollars.

(Signed) E. E. KITTREDGE.

Sworn to and subscribed before me, at the parish of Assumption, this second day of March, 1842.

(Signed) MARCELIN BOURG,
Justice of the peace.

I consider E. E. Kittredge good security for twelve thousand dollars. I am acquainted with the property and the general situation of Dr. Kittredge, and have been for many years, and consider him worth, after paying all his debts, at least one hundred and fifty thousand dollars. He has two sugar plantations in this parish, consisting of upwards of three thousand acres of land well improved, and employed in their cultivation about one hundred negroes. These plantations yield him a revenue of *four* twenty to twenty-five thousand dollars per annum; he has land in Mississippi, and property in New Orleans. As to his enableness I can only confirm the statement in the answers [of] Dr. Kittredge, hereunto attached, which are true. We are neighbors, and mutually impart to each other every thing relative to our moneyed matters.

(Signed) WM. H. SPARKS.

Sworn to and subscribed before me, at the parish of Assumption, this second day of March, 1842.

(Signed) MARCELIN BOURG,
Justice of the peace.

On the 7th day of March, 1842, the following judgment was recorded:

MONDAY, *7th March*, 1842.

The court met pursuant to adjournment—present Hon. Theo. H. McCaleb, district judge; Hon. John McKinley, presiding judge, absent.

JENNISON EAGER, vs. RIGHTOR & WILLIAMS. } No. 535.

The rule taken in this case by plaintiff to show cause why the bond given on the writ of error by the plaintiff in error, John

McCollom, should not be set aside as insufficient, was this day argued by C. M. Jones and J. C. Larue, esqrs.; and thereupon it was ordered by the court that the rule be dismissed.

Clerk's certificate.

I, Duncan N. Hennen, clerk of the circuit court of the United States, ninth circuit, eastern district of Louisiana, do hereby certify, that the foregoing 71 pages contain a full, faithful, and true transcript of the records and proceedings, together with all the evidence adduced on the trial of the case of Jennison Eager vs. Rightor and Williams, so far as the same now remains on file in the said court.

In testimony whereof, I have hereunto signed my name, and affixed the seal of said court, at the city of New Orleans, [L. S.] this sixth day of April, 1842, and in the 66th year of the independence of the United States.

DUNCAN N. HENNEN, *Clerk*.

I, John McKinley, presiding judge of the circuit court of the United States for the eastern district of Louisiana, do hereby certify, that Duncan N. Hennen is the clerk of the United States circuit court, ninth circuit, eastern district of Louisiana, and that due faith and credit are due to his acts as such, and that his certificate is in due form of law.

Witness my hand and seal, this sixth day of April, 1842.

J. McKINLEY, [L. S.]

UNITED STATES OF AMERICA, *ss:*

The President of the United States of America, to the honorable the judges of the circuit court of the United States for the ninth circuit and eastern district of Louisiana, greeting:

Because, in the record and proceedings, as also in the rendition of the judgment, of a plea which is in the said circuit court before you, or some of you, between Jennison Eager and Rightor and Williams, and John McCollom, a manifest error has happened to the damage of the said John McCollom, as by his complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command *of* you, if judgment be therein given, that then under your seal, distinctly and openly, you send the records and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of January next, in the said Supreme Court to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the *to the* laws and customs of the United States should be done.

Witness the honorable Roger B. Taney, Chief Justice of the Supreme Court of the United States, the second Monday of [L. S.] January, 1842. DUNCAN N. HENNEN, *Clerk*.

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Circuit court United States, ninth circuit, eastern district of Louisiana.

JENNISON EAGER et als.,
vs.
H. T. WILLIAMS and A. F. RIGHTOR. } No. 535.

Writ of error.

Copy of writ of error lodged in the clerk's office pursuant to the statute in such case made and provided, February 21, 1842.

The United States of America to Jennison Eager, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at the city of Washington on the second Monday of January next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the ninth circuit and eastern district of Louisiana, wherein John McCollom is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable Roger B. Taney, Chief Justice of the Supreme Court of the United States, this fifth day of May, in the year of our Lord one thousand eight hundred and forty-two.

THEO. H. McCALEB, *U. S. judge.*

United States circuit court, No. 535.

JOHN McCOLLAM
vs.
JENNISON EAGER. } Citation in error.

Marshal's return.

Received seventh May, 1842, and same day served a copy of the within "*citation in error*" on Jennison Eager, by handing the same to C. M. Jones, esq., his attorney, who accepted service of the same in the city of New Orleans.

A. SIDNEY ROBERTSON, *U. S. M.*
By WM. K. STILES, *Dy. U. S. M.*

Supreme Court of the United States.

In the case of Benjamin W. Lawes,
attorney of JOHN McCOLLAM,
vs.
JENNISON EAGER. } In error.

Plaintiffs in error respectfully show, that the judgment of the circuit court of the ninth judicial circuit, eastern district of Louisiana, is erroneous, and ought to be reversed, inasmuch as—

1st. The injunction in this case was set aside on the sole ground that the affidavit was taken before one of the justices of the peace